No. 10-282

Supreme Court, U.S.
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In The Supreme Court of the United States

JOSEPH M. SKUTCHES, M.D. and
ST. LUKE'S PHYSICIAN GROUP,

Petitioners,

v.

BARBARA L. GLASOW,

Respondent.

On Petition For A Writ Of Certiorari To The Superior Court Of Pennsylvania, Philadelphia Office

RESPONDENT'S RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

COHEN & FEELEY

STEVEN J. MARGOLIS
I.D. #44453
Counsel of Record
JONATHAN B. ACKLEN
I.D. #93302
2851 Baglyos Circle
Suite 200
Bethlehem, PA 18020
(610) 332-2718
smargolis@cohenfeeley.com
Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

COUNTER STATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether Petitioners' Petition for a Writ of Certiorari should be denied because Petitioners have failed to produce any evidence before any Court to factually support their allegations of bias against Judge Jack A. Panella of the Pennsylvania Superior Court and because Petitioners have presented no compelling reason for granting their Petition as the issues raised involve the application of well-settled principles of law to the facts of this matter as opposed to an important undecided issue.

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COUNTER STATEMENT OF THE CASE

On March 23, 2004, Respondent's Decedent, Barbara Glasow,[1] was a gynecological patient of Petitioner, Dr. Skutches, and on that date she had an office visit with a chief complaint of a lump in her right breast which was painful. Respondent's Decedent, Ms. Glasow, specifically went to Petitioner, Dr. Skutches to determine whether the lump was cancerous. After an examination, Petitioner, Skutches diagnosed the lump as a sebaceous cyst of the chest wall. Petitioner, Skutches informed Respondent's Decedent that the lump was not cancer and that there was no cause for alarm. He did not order a biopsy of the lump, nor any other additional diagnostic testing. He further advised Respondent's Decedent, Ms. Glasow, that it would eventually open up and drain on its own, but if it became more painful, she could have it drained by Dr. Mark Schadt, a surgeon who had previously followed Respondent's Decedent for cysts. As Respondent's Decedent was advised the cyst was not cancer, and no action was

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[1] On May 5, 2010, Respondent's Decedent filed a notice of Death and a Stipulated Petition to Change Caption (which was agreed to by Paul Laughlin, Esq. who was trial counsel and co-counsel in state court with Petitioner's moving counsel herein) which was thereafter entered by the trial court. Thus, the proper caption to this matter should read "Patricia J. Sayler, Executrix of the Estate of Barbara Lorraine Glasow, a/k/a Barbara L. Glasow, Deceased vs. Joseph M. Skutches, M.D., and St. Luke's Hospital and Health Network, d/b/a St. Luke's Obstetric and Gynecology Associates".

necessary unless the cyst became painful, she took no further action at that time. During the latter half of 2004 the supposed cyst began to grow and in early January, 2005, it broke open in two areas and began to bleed. On or about February 15, 2005, Respondent's Decedent sought treatment from Dr. Mark Schadt; he performed a biopsy of the supposed cyst on that date. The biopsy revealed a poorly differentiated adenocarcinoma representing breast cancer and that the supposed cyst had actually been a malignant tumor.

On Monday, January 14, 2008, a jury trial was commenced beginning with jury selection. During the trial, Respondent's Decedent's medical expert testified that the relevant standard of care for treatment of a lump in the breast required that Petitioner either perform a biopsy, or refer the patient to someone to perform said biopsy. The trial ended on Friday, January 18, 2008 with a verdict in favor of Respondent's Decedent. The jury found Petitioners sixty-five percent (65%) negligent and found Respondent's Decedent thirty-five percent (35%) comparatively negligent. Following the Verdict, Motions for Post-Trial Relief were filed by Petitioners and Cross-Motions were filed by Respondent's Decedent.

On May 27, 2008, the trial judge entered an Order granting Defendants' (Petitioners, herein) Motion for Post-Trial Relief in the nature of a judgment notwithstanding the verdict in favor of Defendants and against Plaintiff (Respondent, herein) on the basis that Plaintiff's standard of care expert failed to

testify to the requisite reasonable degree of medical certainty, reversing her initial holding at the time of trial.

On June 2, 2008, Respondent's Decedent filed a Notice of Appeal to the Superior Court, alleging error on the part of the trial judge as Respondent's Decedent's expert did testify to the requisite degree of medical certainty.

Having received none of the One Hundred Sixty-Five Thousand Seven Hundred and Fifty ($165,750.00) Dollars which would have been due by that time pursuant to the jury's verdict for 'future' medical treatment and not having been able to obtain the necessary treatment to slow or cure her cancer, Respondent's Decedent succumbed to the cancer and died on May 23, 2009.

On June 4, 2009, the Superior Court entered an Opinion and Order finding that Respondent's Decedent's expert did testify to the appropriate standard of care under Pennsylvania law and reversing the Trial Court, with instructions to enter judgment in favor of Respondent's Decedent for the damages determined by the jury, reduced by the amount of contributory negligence allocated to Respondent's Decedent.

On June 18, 2009 Petitioners filed an application for reargument *en banc*. In their application for reargument, they raised the substantive legal issue which had been decided by the appellate panel, alleging that Plaintiff's standard of care expert failed

to testify to the requisite reasonable degree of medical certainty; in addition, they also raised, for the first time, the issue of Judge Panella's alleged bias. No affidavit was supplied by any affiant suggesting bias on the part of Judge Panella, instead, Petitioners merely attached a transcript of Judge Panella's installation ceremony, dated January 4, 2004, a newspaper article from the *Allentown Morning Call* newspaper, regarding the January 4, 2004 installation, a newspaper article from the *Allentown Morning Call* newspaper, dated April 29, 2004 regarding a Penn State University charity event and the Pennsylvania Department of State, Campaign Finance Reports, regarding the 2003 Superior Court Election. On August 11, 2009, the Pennsylvania Superior Court, *en banc*, denied the application for re-argument, both with regard to the substantive legal issue which had been decided by the panel below and also with regard to the alleged bias on the part of Judge Panella.

On September 8, 2009, Petitioners herein filed a Petition for *allocatur* to the Pennsylvania Supreme Court. Again, they raised both the substantive legal issues which were decided by the panel of the Superior Court and for which they were denied a rehearing *en banc*, as well as the allegations of bias against Judge Panella. Again, they failed to file any affidavits regarding this alleged bias, but merely attached the above-mentioned material. On May 26, 2010, the Pennsylvania Supreme Court denied *allocatur* on

both the substantive legal issues and on the claim of bias.

REASONS FOR DENYING THE PETITION

THERE WAS NO REASON FOR JUDGE PANELLA TO RECUSE HIMSELF OR DISCLOSE HIS PROFESSIONAL AND COLLEGIAL RELATIONSHIP WITH A NAMED PARTNER IN RESPONDENT'S FIRM.

A. PETITIONERS FAILED TO PRODUCE ANY EVIDENCE BEFORE THE STATE COURTS OR BEFORE THIS COURT TO FACTUALLY SUPPORT ANY OF THEIR ALLEGATIONS OF BIAS AGAINST JUDGE PANELLA.

Prior to addressing the allegations of bias, it should be noted that despite request for review of the substantive Pennsylvania legal questions regarding whether the Respondent's expert testified to the requisite standard of care, both the Pennsylvania Superior Court *en banc*, and the Pennsylvania Supreme Court failed to find any error worthy of review. Thus, this application for Writ of Certiorari is no more than a delay tactic to prevent Respondent's decedent from collecting on the verdict entered by the jury, as the substantive state law question is well decided.

Under Pennsylvania law, the standards requiring recusal of a judge are well established. "It is the burden of the party requesting recusal to produce

evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially." *Com. v. Abu-Jamal*, 553 Pa. 485, 507, 720 A.2d 79, 89 (Pa. 1998); *see also*, *Com. v. Tedford*, 598 Pa. 639, 731, 960 A.2d 1, 55-56 (Pa. 2008). Further, "[i]f a party questions the impartiality of a judge, the proper recourse is a motion for recusal, requesting that the judge make an independent, self-analysis of the ability to be impartial." *Com. v. Druce*, 577 Pa. 581, 588-589, 848 A.2d 104, 109 (Pa. 2004). To support such motion for recusal, Petitioners "must produce some **evidence** of the necessity for that disqualification." (Emphasis added) *Com. v. Perry*, 468 Pa. 515, 526, 364 A.2d 312, 318 (Pa. 1976). The evidential requirement is consistent with 28 U.S.C. § 144, which provides in pertinent part:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

That has simply never been done in this matter. No affiant has ever sworn that Judge Panella had a personal bias either against Petitioners or in favor of Respondent.

Equally significant is the fact that Petitioners raised this claim for the first time after they received

an adverse ruling from the Appellate panel. Under Pennsylvania law, "[n]o party has any burden – either a burden of exercising 'due diligence' or otherwise – to search out and discover whether perhaps there may exist some fact, known to the judge but unknown to the party, that requires recusal." *Reilly by Reilly v. Southeastern Pennsylvania Transp. Authority*, 330 Pa. Super. 420, 479 A.2d 973, 988 (Pa.Super. 1984). Nonetheless, Petitioners cannot wait until they have received an adverse ruling and then use their prior knowledge of any relationship as a sword to obtain a second opportunity to argue their position. This is consistent with Federal law. "A party may not elect to take a chance on gaining a favorable decision and then, if the decision is unfavorable, raise grounds for recusal of which he or his counsel had actual knowledge prior to the decision being made. *See Delesdernier v. Porterie*, 666 F.2d 116 (5th Cir.), cert. denied, 459 U.S. 839, 103 S.Ct. 86, 74 L.Ed.2d 81 (1982)" (cites included) *Id.*, at Pa. Super. 450-451, A.2d 988-989.

In the case at bar, Petitioners' trial counsel and appellate counsel below, Paul Laughlin, is also a local Northampton/Lehigh County attorney, familiar with both Martin Cohen[2] and Judge Panella. He was

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[2] Attorney Paul Laughlin, Petitioners' trial and Appellate counsel, is a Northampton/Lehigh County attorney; he also knows Martin D. Cohen for many years; in fact, attorney Laughlin received campaign contributions from attorney Martin D. Cohen in the amount of $250.00 during attorney Paul Laughlin's failed

(Continued on following page)

present at oral argument before the panel which included Judge Panella, yet he failed to raise any issues regarding recusal at that time. Instead, Petitioners waited until after the Superior Court reversed the trial judge and directed an entry of judgment upon the jury's verdict to raise this issue. As has been noted in the Pennsylvania courts, "timeliness is significant because [the courts] cannot tolerate [a] litigant knowing information and holding back hoping for favorable rulings and then seeking recusal when rulings are not favorable."[3] *Id.*, at Pa. Super. 450-451, A.2d 988-989, citing *Smith v. Danyo*, 585 F.2d 83 (3d Cir. 1978).

Even had the past collegial relationship between Judge Panella and attorney Cohen not been known by Petitioners' counsel, there was no basis which would require Judge Panella to disclose a past relationship with attorney Cohen, as that is not the type which would give rise to the appearance of impropriety. "Judges are not required to recuse under [28 USC] § 144 when facts stated in a supporting affidavit show that they have a casual, professional relationship

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election campaign to obtain a seat on the bench in the Lehigh County Court of Common Pleas. (See Appendix p. 1)

[3] Petitioners' Appellate counsel, John Hare has alleged in their Petition at page 14, footnote 4, that he did not learn of the alleged 'relationship' between Judge Panella and attorney Cohen until after the June 4, 2009 decision by the Superior Court panel; nonetheless, this has never been sworn to in any Petition of Affidavit and it ignores any knowledge held by trial and appellate counsel, Paul Laughlin.

with an attorney, victim, witness, or litigant appearing before them in court. Recusal is required only when the stated facts establish a personal relationship of such magnitude that the judge cannot be impartial." *U.S. v. Olis*, 571 F.Supp.2d 777, 786 (S.D.Tex. 2008).

Instead of presenting any reviewing court with facts via an appropriately sworn affidavit, Petitioners rely on two assertions, the former is acknowledged, the latter is unsupported supposition. The first contention is in regard to money contributed by members of the Cohen & Feeley law firm to Judge Panella's 2003 election campaign and second is the unsupportable allegation of close personal friendship between Judge Panella and Martin Cohen, the first named partner in the firm, who had no involvement in the handling of the underlying medical malpractice action.

Petitioners cite the recent United States Supreme Court decision in *Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252, 2009 WL 1576573, 77 USLW 4456 (2009) for the undisputed proposition that "a fair tribunal is a basic requirement of due process." *Id.*, at 6. Petitioners, in their arguments before the Pennsylvania Superior Court and Supreme Court

generally cited Canon 3C(1) of the Code of Judicial Conduct,[4] adopted by the Pennsylvania Supreme Court, effective January 1, 1974, yet they failed, as they do here, to point to any specific acts of impropriety allegedly committed by Judge Panella. Further, there is nothing in the anecdotal, unsworn information supplied by Petitioners that gives rise to any appearance of impropriety such that the judge would be required to disclose and/or recuse himself.

It appears from the submissions of Petitioners that attorney Cohen gave $2,500.00 in campaign contributions to Judge Panella's campaign in 2003 and that Dennis Feeley, another named partner in the firm, gave $2,000.00. (See Appendix pp. 2-3) For complete accuracy, having checked campaign contribution records, trial and underlying appellate counsel for Plaintiff/Respondent's Decedent, Steven J. Margolis, also a partner in the firm, contributed $200.00 to Judge Panella's campaign in 2003. (See Appendix p. 4) It appears to be the contention of Petitioners that these campaign contributions either by themselves,

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[4] Canon 3(C)(1)(a) of the Code of Judicial Conduct provides:

C. Disqualification

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

or in conjunction with the unsupported allegations of a close personal relationship between Martin Cohen and Judge Panella required Judge Panella's disclosure of that information and further, his recusal in this matter.

The plurality of the United States Supreme Court, in *Caperton*, *supra*, specifically noted that "**[n]ot every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge's recusal,** but **this is an exceptional case**."[5] (Emphasis added) *Id.*, at 11. Unlike the facts in *Caperton*, *supra*, the total of all contributions of all members of the Cohen & Feeley law firm still amounts to less than one percent of the total amount of $584,195.00 raised by Judge Panella for that 2003 election cycle. (See Appendix pp. 5-6). Additionally, in the *Caperton* case, this court noted:

> **The temporal relationship between the campaign contributions,** the justice's election, **and the pendency of the case is also critical. It was reasonably foreseeable, when the campaign contributions were**

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[5] In the *Caperton* case, as this Court is well aware, Respondent's Decedent "**contributed some $3 million to unseat the incumbent and replace him with Benjamin. His contributions eclipsed the total amount spent by all other Benjamin supporters and exceeded by 300% the amount spent by Benjamin's campaign committee**. App. 288a. Caperton claims Blankenship spent $1 million more than the total amount spent by the campaign committees of both candidates combined." (Emphasis added) *Caperton*, *supra*, at 11.

> **made, that the pending case would be before the newly elected justice.** (Emphasis added) *Id.*, at 12.

In the present matter, it can hardly be contended that in making campaign contributions to Judge Panella in 2003, it was expected that Judge Panella, in 2009, would be sitting on the appeal *sub judice* being handled by one of attorney Cohen's partners, when the underlying medical malpractice of the Petitioner doctor and medical practice did not even occur until 2005, two years after the foregoing campaign contributions were made.

The second issue raised by Petitioners as the basis for recusal is the allegation that Martin Cohen and Judge Panella have a close personal friendship which would require recusal. In assessing whether or not there was a close personal friendship, Petitioners rely upon two newspaper articles and the transcript of Judge Panella's Superior Court installation ceremony performed in the Northampton County Courthouse. They supply no factual affidavits and even misstate and take out of context the comments made by Judge Panella during that ceremony to imply a closer relationship than actually exists or existed. Petitioners claim that Judge Panella called Martin Cohen one of his "good buddies". In fact, at his installation, Judge Panella stated:

> As I said, there are too many people to thank from the campaign. I must make specific mention though of Attorney Steven Goudsouzian, who sacrificed many long hours. Without the

> guidance and support of people like District Attorney John Morganelli, Martin Cohen, my good buddies, Phil Hof and Steve Molder, Joe Long, and John Werkheiser, and there are so many others – I apologize if I missed you from the bottom of my heart an endless thank you. (See Appendix p. 46).

When he talked about "good buddies", Judge Panella was clearly referring to Phil Hof and Steve Molder. In fact, it was attorney Phil Hof who gave the introductory speech for Judge Panella that day. (See Appendix pp. 12-21).

When assessing any alleged "relationship" between Judge Panella and attorney Cohen or any campaign contribution which was made seven (7) years ago by members of the Respondent's Decedent's law firm, courts must review facts, not speculation and surmise. Mere conclusions, opinions, rumors or vague gossip are insufficient. *Berger v. U.S.*, 255 U.S. 22, 34, 41 S.Ct. 230, 233 (1921) Justice Scalia, in denying a request for his recusal, noted that "[t]he decision whether a judge's impartiality can 'reasonably be questioned' is to be made in light of the facts as they existed, and not as they were surmised or reported." *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 541 U.S. 913, 914, 124 S.Ct. 1391, 1392 (2004) Further, Justice Rehnquist stated "[t]his inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances." *See Microsoft Corp. v. United States*, 530 U.S. 1301, 1302, 121 S.Ct. 25, 26,

147 L.Ed.2d 1048 (2000). Petitioners herein support their Petition for a Writ of Certiorari with mere supposition based upon two newspaper articles and an out of context quote from Judge Panella's installation speech. Petitioners have failed to supply this court with any facts on which it could grant their requested writ. They have presented no evidence indicating that Judge Panella's relationship with Martin Cohen has ever been anything more than collegial. As this court has held "a federal judge has a duty to sit where not disqualified which is equally as strong as the duty to not sit where disqualified." *Laird v. Tatum*, 409 U.S. 824, 838, 93 S.Ct. 7, 15 (1972). Thus, Judge Panella fulfilled his judicial obligation.

B. PETITIONERS HAVE PRESENTED NO COMPELLING REASON FOR GRANTING THEIR PETITION FOR A WRIT OF CERTIORARI AND THEREFORE SAID PETITION SHOULD BE DENIED.

Rule 10 of the Rules of the United States Supreme Court provides the character of the compelling reasons for granting a petition for a writ of certiorari. While the reasons enumerated in the Rule are not controlling or a complete measure of the Court's discretion, their listing provides guidance regarding the circumstances which must be present to create a compelling reason supporting the granting of a petition. As this Court is well aware of Rule 10, the Rule

will be addressed without recitation of the text herein.

The subject of this Petition is not an issue that has been the subject of conflicting appellate decisions as to call for this Court's supervisory power. Instead, Petitioners raise a question which amounts to the alleged misapplication of a properly stated rule of law, bias and judicial recusal. This Court previously stated in dismissing a writ which was improvidently granted "it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeal." *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393, 43 S.Ct. 422, 423 (1923); *see also, Magenau v. Aetna Freight Lines, Inc.*, 360 U.S. 273, 285, 79 S.Ct. 1184, 1191 (1959).

Petitioners herein attempt to couch their petition so that it appears to raise a question not yet addressed by this court. In fact, as stated above, the denial of *allocatur* of the Pennsylvania Supreme Court is consistent with this Court's holding in *Caperton*, *supra*, as well as the well-established principle that Judges are permitted to have friends who are attorneys. Recusal based on friendship is clearly not a compelling reason to grant a petition for a writ of certiorari as it has been established that "every federal court faced with arguments for recusal

based on friendship have found recusal unnecessary." *M.K. Metals, Inc. v. National Steel Corp.*, 593 F.Supp. 991, 995 (D.C.Ill. 1984). Such a well-established principle of law is not an appropriate basis for grating this petition.

In this matter the Pennsylvania Supreme Court has not decided any important federal question in a way that conflicts with a decision on the same issue of any other state court of last resort or a United States court of appeals. Nor has the state court in this matter decided an important question of federal law that has not been settled by this Court. Therefore, no compelling reason exists to support granting the petition before this Court.

CONCLUSION

Petitioners have not met their burden in raising any compelling reason for the granting of this Petition for a Writ of Certiorari. Petitioners have failed to produce any evidence before the state courts or before this Court to factually support their allegations of bias. Petitioners' claim that campaign contributions in 2003 of less than one percent of the total amount raised by Judge Panella for that 2003 election cycle raise an equivalent concern to that raised in *Caperton*, *supra*, is baseless and is not a compelling reason to grant a petition for a writ of certiorari. Further, none of Petitioners' claims regarding the supposed close personal friendship between Judge

Panella and Martin Cohen, a partner in Respondent's Decedent's counsel's firm who had no involvement in the handling of the case, even assuming *arguendo* that they were factual and not merely based on supposition, create a legitimate question regarding the existence of a close personal relationship between Martin Cohen and Judge Panella which required Judge Panella's disclosure of that information and his recusal in this matter. Finally, there is no issue that conflicts with or presents an undecided important federal question. This Court addressed campaign contributions in *Caperton, supra*, and questions of collegiality among jurists and practicing attorneys have been extensively and consistently addressed as stated above. As Petitioners have failed to meet their burden, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

COHEN & FEELEY

STEVEN J. MARGOLIS
I.D. #44453
Counsel of Record
JONATHAN B. ACKLEN
I.D. #93302
2851 Baglyos Circle
Suite 200
Bethlehem, PA 18020
(610) 332-2718
smargolis@cohenfeeley.com

Counsel for Respondent

Contribution Details

Contributor	Date	Amount
Martin D. Cohen Easton, PA 180434449	2/13/2003	$250.00

Occupation: –

Employer: PA

Description: Monetary Contribution –

Recipient: Citizens for Paul Laughlin

Report: 2003 Cycle 2

Contribution Details

Contributor	Date	Amount
MARTIN D. COHEN EASTON, PA 180434449	5/14/2003	$2,500.00

Occupation: ATTORNEY

Employer: –

Description: Monetary Contribution –

Recipient: PANELLA, JACK
JUDGE FOR SUPERIOR CT

Report: 2003 Cycle 3

Contribution Details

Contributor	Date	Amount
DENNIS FEELEY BETHLEHEM, PA 18015	5/7/2003	$2,000.00

Occupation: ATTORNEY

Employer: –

Description: Monetary Contribution –

Recipient: PANELLA, JACK
JUDGE FOR SUPERIOR CT

Report: 2003 Cycle 3

Contribution Details

Contributor	Date	Amount
STEVEN J. MARGOLIS BETHLEHEM TOWNSHIP, PA 18045	4/25/2003	$200.00

Occupation: –

Employer: –

Description: Monetary Contribution –

Recipient: PANELLA, JACK
JUDGE FOR SUPERIOR CT

Report: 2003 Cycle 7

Campaign Finance Report
Report Cover Page

Filer Identification Number			**Report Filed By**	
2003141			Committee	
Name and Address of Filing Committee Candidate or Lobbyist				
PANELLA, JACK JUDGE FOR SUPERIOR CT 2925 WILLIAM PENN HIGHWAY, SUITE 301 EASTON, PA 180455283				
Report Cycle	**Type of Report**	**Election Date**	**Amendment**	**Termination**
2003 Cycle 7	Annual		No	Yes
Office Sought by Candidate		**District**	**Party**	**County**
Judge of the Superior Court		0	Democratic	Northampton

Summary of Receipts and Expenditures Through:	
A. Amount Brought Forward from Last Report	$0.00
B. Total Monatary Contributions and Receipts (from Schedule I)	$584,195.00
C. Total Funds Available (Sum of Lines A and B)	$584,195.00
D. Total Expenditures (from Schedule III)	$584,195.00
E. Ending Cash Balance (Subtract Line D from Line C)	$0.00

F. Value of In-Kind Contributions Received (from Schedule II)	$5,398.24
G. Unpaid Debts and Obligations (From Schedule IV)	$0.00

West's
PENNSYLVANIA
REPORTER

Covering Cases Reported in
ATLANTIC REPORTER
Second Series
A Unit of the National Reporter System

890 A.2d – 892 A.2d

Superior Court of Pennsylvania

Installation Ceremony

HONORABLE
JACK A. PANELLA

January 9, 2004

Proceedings

MR. MORRISSEY: Let the ceremonial session of the Superior Court of Pennsylvania, President Judge Del Sole presiding, come to order. Let all manner of persons arise in attendance, let the family, friends, associates of the Honorable Jack A. Panella be joyful, to the citizens of this Commonwealth, confident and assured, as the Superior Court convenes for administration to the Honorable Jack A. Panella of the Oath of Office of the Superior Court of Pennsylvania. God save the Commonwealth and this Honorable Court.

PRESIDENT JUDGE DEL SOLE: Be seated everyone.

Good afternoon. What a great day, important for the Panella family and for our new member, Judge Jack Panella. It is a joyful occasion. And obviously, Jack, you either have a lot of friends or a lot of people looking for a position on the Court of Common Pleas, I'm not sure which it is, but we'll find out as the day goes on.

At this time I would like to call Brigadier General Jessica L. Wright forward, please.

General Wright, Color Guard, advance the colors.

Ladies and gentlemen, would you please rise, Honorable Judges, Bishop Cullen and ladies and gentlemen, would you please join me in reciting the Pledge of Allegiance.

(The Pledge of Allegiance was recited, led by Brigadier General Wright.)

PRESIDENT JUDGE DEL SOLE: At this time I would like to call upon the Most Reverend Edward P. Cullen, Bishop of the Diocese of Allentown.

BISHOP CULLEN: Let us pray. Lord, help Your servant, Jack, to fully appreciate that he cannot bring justice to his new office unless he dwells with You and that he cannot dwell with You and reflect the wisdom of Your caring love unless he accepts Your call to be a living sign of selfless service. Lord, teach him to be humble and charitable in spirit. Take from him all false confidence in his own strength and never allow him to place his only hope in forms of earthly power. Fill him with a thirst for justice and a

zeal for compassion. Dispose his heart to respect the rights of all citizens. Help him to promote harmony and fairness for every individual as well as the common good of our society. Let him rejoice, especially in serving those who have nothing to offer except their needs and their dignity as human beings.

Foremost, let him never forget the impoverished, exploited and oppressed. Let tumidity and fear have no influence in his deliberations rather may the character of his work be marked by those virtues that will foster justice in all circumstances.

Give him the gift of prudential judgment so that his decisions are always rooted in spiritually sound moral values, especially those which hold in highest priority the well being of all human life.

Aware of Your abiding presence we ask that You grant Your servant, Jack, the blessings of insight, friendship and encouragement. Let him come into his new life through his colleagues and associates, who will assist him carrying out the responsibility of his new office.

Conscious that the future is unknown, yet encouraged by Your unconditional love, we here prayerfully seek new spirituality, strength, for every elected official throughout our Commonwealth.

It is with faith that we place this prayer before You, the Lord, and Father of us all. Amen.

PRESIDENT JUDGE DEL SOLE: Please remain standing while Matthew James Allshouse renders the National Anthem.

(Matthew Allshouse sang the National Anthem.)

PRESIDENT JUDGE DEL SOLE: Ladies and gentlemen, please be seated.

The Superior Court of Pennsylvania for over 107 years has been convening in ceremonial sessions on and off for the happy and joyful purposes of installing new members of the Court. And we are here today to present ceremonially the Oath of Office to Jack Panella, one of our newest members.

There was some question whether this election would ever end. I'm sure most of you were following it, as were the members of this Court. I can assure you; however, that, with the understanding of the Supreme Court of Pennsylvania we were committed to making sure that at least Judge Panella and Judge McCaffrey were working as of last Monday, although they might not have been earning the salary of the Superior Court Judge.

Judge Panella, you join a Court that has been in service since 1895 in Pennsylvania. It is one of the busiest intermediate Appellate Courts in the United States. Last year we had over eight thousand four hundred appeals filed in this Court. And the Judges in this Court filed decisions in over five thousand cases. Considering that we only have fifteen commissioned Judges and eight Senior Judges that is a

remarkable workload per Judge. And no Court in this Country decided that many cases per Judge, no intermediate Appellate Court. So we are quite proud of the work that we do and we know that we are receiving a new member who has also distinguished himself through hard work and dedication to the Rule of Law.

He began practicing law in 1980. Judge Panella served as a Law Clerk, you were a County Solicitor, and you have been a Judge on the Court of Common Pleas here in your beloved Northampton County. You have also been the President Judge of the Court of Judicial Discipline. We know that no one achieves those goals, no one achieves those positions unless they are committed to working hard, to dedication to their and job and to their community. And we welcome you to the Court. You are going to find it a wonderful institution and colleagues who will be most helpful to you as you begin your duties.

I would like to take a moment and first thank the Judges of the Northampton County Court of Common Pleas for allowing us to use this beautiful Courtroom, particularly the President Judge, who we've been on many different groups together. Bob, we thank you for allowing us to be here today and help celebrate in the homecoming of our new Judge on this wonderful event.

With that I'm going to call upon Philip Hof, Esquire, for remarks.

Mr. Hof.

PHILIP HOF, ESQUIRE: Your Honor, good afternoon everyone. Members of the Clergy, Judiciary Administration, elected officials, friends, family and my fellow members of the Bar. We wouldn't be here today it not for Jack Anthony Panella. But His Honor asked that this not be a testimonial to him in the nature of a eulogy. And really it would be inappropriate to eulogize an Appellate Judge until he's authored his first opinion. In light of that, I think a judicial argument might be more appropriate, however brief I can try to make it.

And therefore, may it please the Court; and the Court; and the Court; this question presented on appeal must look to the Pennsylvania Rules of Judicial Administration. Rule 703 provides that it is the policy of the unified judicial system that any matter, at any stage of a proceeding be brought to a fair conclusion as promptly as possible consistent with the character of the matter and the resources of the system. And the requirements of this Rule further specify and implement this policy in keeping with the Court's constitutionally mandated policy and responsibility to oversee property, proper disposition of the business of the Pennsylvania Court. So the question presented on appeal is whether a Common Pleas Judge from Northampton County, and the Borough of Brooklyn, elected by overwhelming votes to the Superior Court of Pennsylvania is likely to implement prompt and fair administration and disposition of appeals. The suggested answer so far is yes. And for precedent we cite three sources, the Northampton

County Court of Common Pleas, our cherished Bench, this Bar and the supporting family of this Appellate Judge.

Source Number 1 is the Bench. And this allows you to know whether I'm one third through, two-thirds through, et cetera. The Third Judicial District, Northampton County, is a source of pride to this Bar and this community. I am always moved like they are talking about my own child when I go to another venue and this is the point where the Judge or opposing counsel says, "oh, Easton is that Northampton County?". And I say, yes. And they say, good Bench, quality Bench. Those couple of words mean an awful lot because this Bench is known, although we are on top of a hill, we're not on a hill because it is known for a level playing field for any litigant who comes before this Court for adjudication. Lead by a President Judge whose conduct defines the standard of what that position should be. And thanks to Judge Panella's colleagues, who work in all diverse areas, we have earned the nickname of the Rocket Docket. And that is despite a shortage of Judges compared to what some other counties are fortunate enough to enjoy. Our Judges are overworked but not complaining. And a Judge will hear a Domestic Relations matter on a Thursday morning and a property appeal later that afternoon and they do so with competency. And this diversity further justifies why Judge Panella's medal has been hardened for his position on the Appellate Bench.

With our sister jurisdiction of Lehigh County to the west, the Lehigh Valley is recognized as not just the place between the two metropolitan areas but a growing, vibrant area, an area where the Bench is respected and it is known as a nice place to practice law.

I'm probably stating the obvious in noting that today history is marked by the first time a member of the Northampton County Bench or Bar, for that matter, has assumed the duties of Superior Court Judge. Joining Judge Simpson on the appellate level from our County, Judge Panella moves up and we'll now find that people travel here by bus from Philadelphia and Pittsburgh hopeful that they will become appellate judges, they come just to drink the water. Judge Panella's service even at its zenith will always be a product of this quality Bench.

But before Judge Panella was Judge Panella he was Jack. And this provides the second source of precedence for his justification to assume further duties. He's no less a product of this Bar than he is a product of this Bench. And ours is a Bar even still with all the numbers we have, with all the squabbles we have from time to time, a Bar where a lawyer's word is his and her bond. And there is a civility among Northampton County lawyers and it is something that is known to us and it is a secret we keep. It is not uncommon for a Philadelphia practitioner to come here the first day of trial, he or she is just trying to get his or her way around. The second day they are telling you a little bit about what it is like to practice

in the big city. The third day they are asking you if the housing is expensive here. It is a reflection on the tone that the Bench sets, the expectation that the Bench communicates and the collegiate and camaraderie among our brothers and sisters. And Jack was a child of this Bar.

Judge Panella has taken an oath twice here before on memorable occasions. The first in 1980 as a lawyer. Judge Panella and I interviewed together when we were seniors in law school at the same hour, on the same day for the clerkship. A wonderful experience in Northampton County. We were in the second wave actually of applicants. The first wave had already had a few selections taken but they couldn't fill two positions so they had to dig a little deeper. Our good friend, Steve Molder, was in the first but Jack and I were in the second. And we interviewed first with all the Court. And then Judge Franciosa was conducting Juvenile Court so we went down and met with Judge Franciosa. He asked us each if we could consider remaining in Pennsylvania. I was living in Oklahoma and said it seemed like a nice place to raise a family; Pottsville, wife. I certainly would consider it. And Judge Panella said, Your Honor, I don't think so. But things did warm up. I went to Philadelphia, didn't know a sole but I came to the study group and there at the Bar review cram course was Jack Panella, Jay Leeson, John Morganelli. I asked them, "could I join your study group?", Judge Panella said no. His decisiveness was showing its way even then.

He became a busy practitioner after the clerkship and he was always on the move. You'd be in the courtroom at the Bench, you'd hear a huge metal can go over in the marble hallways, it would ring through the halls, somebody would say Jack. Somebody would lean on the light switch in the back of the courtroom, all the lights went off. You'd hear Judge Williams say, Mr. Panella, you are leaning on the lights.

His first day of practicing law he knew what to say because Judge Williams sat there, he said, Your Honor, may I approach the Bench? Judge Williams was busy and said, no, you may not, Mr. Panella. But Jack had only known what to say, not to what to listen to so he stood there like a puppy waiting for his biscuit until the Judge said, sit down.

With these things behind us we concluded that it was time for Judge Panella to be safe on the other side of the Bench.

Our Bar will have a lasting effect on the Superior Court through what we have given to Judge Panella. These include a number of qualities, perhaps foremost the courtesy. Courtesy he shows to members of the Bar and to litigants who come into his courtroom. This is before he sentences them. But it is a very genuine courtesy and whether you are in the cafeteria or in his chambers he will always address how the lawyer is being treated, how the process is being preserved and the signal that is being given to the litigants, in terms of the dignity of the process. And I understand there was one Montgomery County

lawyer who actually asked Judge Panella to recuse because he was showing too much friendliness towards that Montgomery County lawyer. He didn't trust the courtesy. That is an overstatement. But Judge Panella always has made out of County practitioners feel very much welcome here and the home rule advantage is definitely kept to a minimum where everybody is given their day in Court.

Judges always say I'll remember what it is like to have been a lawyer when I get on the Bench. And then somebody gives them a pill, sometimes not all of them, where the memory tends to fade. Judge Panella has shown on his tenure in Northampton County that he not only hasn't forgotten what it is like to practice law he truly does remember and he keeps that in mind, the constraints of the practice, the balances of the practice. And he is someone that will ask a lawyer can you be here next week before he orders them to be there next week. And at least he asks first. And it is something that makes a difference in the stress level of the practitioner.

Energy and industry are qualities that he will also take. We all get fatigued just from watching Jack work. You should expect promptness in his opinions that he renders on behalf of the Superior Court. I'm expecting that if I am fortunate or unfortunate enough to be there on appeal I will have an opinion in my FAX before I return from Philadelphia. He's shown dedication. He's never been somebody to shy away from hard work. He's put in the hours. And whenever a really late night is required he's never

hesitated to require his law clerk to do that work. He will bring a fairness, a compassion. He really has a contempt for injustice and it is something that I think will stay with him even at the appellate level. He doesn't like sharp practice. He doesn't like people pulling things. He doesn't like slick moves. He wants everything to be on the table and he wants to cause the lawyers to speak to one another whenever possible and work things out.

The third source of support in addition to the Bench and the Bar is his family. And Jeanne, there is a sainthood for you. Alison, Rocco and Brian, you are not only a credit to your dad you are so much like your mom, congratulations. Vivian, you did a beautiful job raising this boy. You were here in '91 to see him take the Bench. You weren't feeling well then. God bless you. We're to glad see you here today. And you should be so proud.

JUDGE PANELLA: That is my mom.

(APPLAUSE)

PHILIP HOF, ESQUIRE: And Ann Marie, your little brother, remember he said if you promised to move the Lehigh Valley, not Brooklyn I'll never bother you? I'll never ask you for a thing? Well, there is something above a sainthood and that is for you.

From his roots in Brooklyn, Jack has as shown a contempt for oppression, compassion for the disadvantaged person and a respect for hard work. And you never wanted it to be someone who brought a

litigant before Judge Panella who had not paid his or her dues in getting to where they should be because he had no patience with people who don't hold their own weight. But he always has a compassion for people who sometimes fall on hard times. And I think if he has a reputation for being stern with criminals it is because of not an anger directed towards them it is because of what they can take away from other people. And I think that is something that has not always been understood. And it is a rare quality. And it is one that I think helps preserve what we have. We're so fortunate to have Judge Panella as he's been so fortunate to have the Bench, the Bar and the family.

And, you know, there'd be some Judges who might become a little concerned that his friends and the lawyers and his own family wanted him to exit Northampton County so badly and offer to assist him in this. The truth is, Judge, we never expected you to be elected. Otherwise, we wouldn't have supported you so much when you appeared at Larry Holmes building and remember everybody was clapping and whispering, we were all saying, let Jack just get it out of his system, okay? And you know, let's hope he's not cranky when he's back on the Bench. And we just kept talking until you said something about appellate elections are very expensive and then everybody got quiet. And Larry left the room. But you did win, Judge Panella, you won big.

And I remember hearing that Father Sheehan, who was your Priest at St. Jane's, your parish, and

who is now I think a resident at St. Anthony's, you said to Father Sheehan, Father, I have prayed to St. Anthony hoping that it may help for this election and the day after Election Day. Father Sheehan said Jack, I think St. Anthony shot you out of a cannon. You won, from what I hear from people that I practice with and is in outlying counties, that you won because you have convinced them that you would obey by your oath of trust. A lawyer from Centre County yesterday said he seems like such a sincere guy and he seems to really care about the people that come before him. And these supportive sources provide precedent for a reliable prediction.

And in closing, my prediction is that Judge Panella will rule on the Superior Court with enthusiasm and with propelling force not intimidation. He will provide that level playing field even on the appellate level for the lawyers who come before him. He won't second guess or micro-manage or Monday morning quarterback the trial Judges, who after all are the people who are in the trenches and see firsthand what is going on. He won't immediately rush to judgment of a Common Pleas Judge who sentences someone even if it is not the maximum. And he will not substitute his own discretion for the sentencing Judge or the adjudicating Judge. He will simply make sure that there was fairness and an obeyance of law down below. And I believe that Judge Panella has shown he can do this without a preconceived political agenda and really the ideal jurist, in my mind. And I'm not a wise person. Yet anyway, the

one where you go before him or her and you don't say they are going to go this way because of who they are. They are going to go this way because of the facts and because of the law that should be applied. And that is the way Judge Panella has been. And I think that is why he's received bipartisan support and left and right support in being elected to this post because he has shown that lack of preconceived agenda. He'll remember the constraints and the demand of practicing law. He'll be sensitive that while appeals are pending lives are hanging in suspension.

And in weighing the individual liberties in these post 9/11 times, our cherished liberties with the need for collective security I predict that he'll remain a pillar of support for our cherished system of laws. And I sign respectfully submitted, a member of this cherished Bar. Thank you.

PRESIDENT JUDGE DEL SOLE: I will take a moment to introduce to the audience the Judges that e here from the Appellate Court in Pennsylvania. Immediately to my right is Justice Russell Nigro of the Pennsylvania Supreme Court of Pennsylvania, a good friend of Judge Panella and will have some remarks a little bit later.

Joining me today from the Superior Court are to my left Judge Kate Ford Elliott from Allegheny County; Justice Nigro to the right; Judge Michael Joyce from Erie County; on the left; Judge Correale Stevens from Luzerne County to my left; to my right Judge Richard Klein from Philadelphia County;

Judge Mary Jane Bowes from Allegheny County. And immediately in front of me is Judge Seamus P. McCaffrey from Philadelphia County. These are the Commissioned Judges that are here.

And our Senior Judges that are here, Judge Patrick Tamilia from Allegheny County; Judge Phyllis Beck from Montgomery County; President Judge Emeritus Stephen McEwen from Delaware County; Judge Justin Johnson from Allegheny County. Here today is a former colleague of ours, who just left service on the Superior Court, some say to make way for Judge Panella, that is Robert Graci. I know Bob is here and we thank him for coming.

And we also have present Judges from the Commonwealth Court of Pennsylvania, Judge Robert Simpson, I think you have all heard from around here; Judge Flaherty, Senior Judge from the Commonwealth Court, Allegheny County.

I have a letter that I have been asked to read: To the Honorable Jack A. Panella, Superior Court of Pennsylvania.

> Dear Judge Panella slash Jack, it is disconcerting to me that I am unable to personally attend the auspicious occasion of your elevation to the Superior Court of Pennsylvania. No doubt much will be said today relative to your legal capabilities, morality, tenacity and integrity. There is no need to be redundant.

I would; however, like to leave you with the words of wisdom passed on to be by my former colleagues of the Fifth Judicial District when I left to take my seat as a Justice of the Supreme Court of Pennsylvania, quote, fill the seat of justice with good men but not so absolute in their goodness as to forget what human frailty is, closed quote. It is without question that you have not only lived by these words of simplicity but will continue to carry yourself accordingly.

Godspeed on your tenure and any future endeavors. Very truly yours, Steven A. Zapalla, Chief Justice Emeritus, Supreme Court of Pennsylvania.

And now I would like to call upon Gerald Seyfried, the former Executive of Northampton County.

MR. SEYFRIED: Thank you. Members of the Clergy, Bishop Cullen, Honorable Judges, elected officials, guests, Jack Panella and his family and all his family members, good afternoon.

It is a privilege for me to be here and an honor for me to be here today to be part this joyous and history-making event, the swearing in ceremony for a friend, His Honor, Jack Panella, to a seat on the Superior Court of Pennsylvania is a first for Northampton County. Never before in the history of the county has an attorney been elected to Superior Court Judge. Not only is that a major feat but our friend, Jack, was also elected with an overwhelming vote. The election of Judge Panella to the Superior

Court is indeed significant for Northampton County. No longer is the County of Northampton in the shadows of Philadelphia and Pittsburgh. Northampton County is located in the third largest metropolitan area in the Commonwealth. And the election of Judge Panella to the Superior Court is recognition of that stature.

The achievement of being elected to this high appellate position is evidence when we took a look around the room and we note that dignitaries who are here today. This hall today is blessed with dignitaries and they come from all walks of life. We have with us his Excellence, Bishop Edward Cullen. We have with us today a distinguished member of the Supreme Court; Federal Court; members of the Superior Court; Commonwealth Court; Court of Common Pleas and also in attendance the Secretary from the Governor's Cabinet; Senators; Representatives and many, many other elected officials.

This is truly an historic moment in the history of Northampton County. The court stenographer is recording the words of each speaker today and these minutes will become part of our written history. The documents will be entered into our Archives for future generations to relive this moment. That is why it is important that today we note for the record some important information about our friend, Judge Panella.

This I want in the record. It was on March the 27th in 1992 that I beat Jack Panella in a game of

handball. Now you guys know this, at least you know how he runs and he's in these marathons, well, that's right, because one chink in his armor, he didn't know this, the athleticism in this body, I'll tell you.

I had to get that in there, Your Honor. People have a right to know.

It seems no matter where you go Judge Panella always makes friends. And he makes a lot of new friends. Now, don't get me wrong, not everybody is this man's friend. Our prison is full of individuals over here who have a different opinion of him, okay?

But Judge Panella, as we knew him, 10, 15 years ago, Jack has always been a very dedicated public employee. He served as a Solicitor for the County of Northampton under the late Gene Hartzell. He served as County Solicitor to my Administration in the early 90's. He went on and joined an outstanding group of individuals on the Northampton County Bench. Judge Panella has served our community with dignity as a member of the Court of Common Pleas. He has risen to the highest pinnacle of his profession. He has always faced tough decisions and new challenges in all his endeavors. He has met and passed the test with flying colors. I was almost always amazed at the energy level of my friend. And it takes a special guy to fulfill duties of Solicitor of this County and still find time to go to trial once a month. Plus he found time to go to Brooklyn to visit his mother on a regular basis. And we could always tell when he went to Brooklyn. Every office on the fourth floor

would have cannolis and Italian goods and they'd be there for days.

Recently I spoke with many individuals in the Courthouse and many of your friends, Jack, and asked them if they were able to come to the podium today what is the message that they would leave for the record? So for all those individuals here, of who I talked with who are not able to come to the podium today but are with you in these chambers and with you in their thoughts, this is their message. Now you go on to meet new challenges as a member of the Superior Court of Pennsylvania. Judge Panella we're all here today to wish you well. The truest recognition of what I have achieved is that which comes from the hearts of your family, your friends and your co-workers who have come here today to share this moment with you. As you face those new challenges remember me and all your friends. We here are only one of any army of friends who will always be with you. We wish you the best.

And this message comes from all your friends here in Northampton County. Thank you.

PRESIDENT JUDGE DEL SOLE: Thank you, Mr. Seyfried.

You may wonder when I was introducing my colleagues on the Bench that I was going from left to right with the names and that is because we generally try and do things based on seniority. And the law of the Commonwealth requires that when the Judges are elected to the same Court on the same day that

you draw for seniority. That would really let you determine where you sit on the company picture, you either get to sit in the middle or at the end and all of you probably will be very happy to know that Judge Panella drew the last number so he is the lowest in seniority of the Commissioned Judges on the Court.

I want to take a moment also to introduce to you some of the Judges that are here. First again Judge Robert Freedberg, the President Judge of Northampton County; and Judge, again, thank you for this beautiful courtroom and use of it, to you and the County and the citizens of this County it is magnificent and you can be very proud of it.

PRESIDENT JUDGE FREEDBERG: We're honored that you are here.

PRESIDENT JUDGE DEL SOLE: Thank you. We'll see how that works when Judge Panella starts writing reversals.

Now, there are a number of Judges here. I'm just going to name them that are here. If I don't have your name on this list and I don't call your name and you feel you are so important that you should be introduced, please give me your name and we'll take care of it.

Judge Stephen Baratta; Judge Emil Giordano; Judge Chester Harhut; Judge Kimberly McFadden; Judge William Moran; Judge Arnold New; Judge Edward Reibman; Judge Edward G. Smith; Judge

James C. Hogan; Judge Isaac Garb; Judge Robert Blasi, from Philadelphia Municipal Court.

And we also have some of Judge Panella's colleagues from the Court of Judicial Discipline, the President Judge Sal Cognetti; Judge James Beasley; Judge Robert Capoferri; Judge Christine Donahue; Judge Carol McGinley, who is also a common Pleas Court Judge in Lehigh County; Judge Paul Panepinto, who is also a common Pleas Court Judge in Philadelphia; Judge Ralph Sposato, the President Judge Emeritus of the Court; Judge Joseph Sweeney; Judge Esther R. Sylvester, another President Judge Emeritus of the Court and also Common Pleas Court Judge in Philadelphia.

And we also have with us today the distinguished Auditor General of Pennsylvania, Bob Casey, Jr.

Thank you for coming.

Now I would like to introduce my predecessor as President Judge, a dear colleague and a great friend, the Honorable Stephen J. McEwen, President Judge Emeritus of the Superior court of Pennsylvania and President Judge Emeritus of the Court of Judicial Discipline of Pennsylvania.

PRESIDENT JUDGE McEWEN: May it please the Esteemed Justice Nigro; Your Eminence, Edward Cullen; Monsignor Hayek; members of the Clergy; President Judge Joseph Del Sole and my cherished colleagues upon the Superior Court; Judges Harhut and Simpson of the Commonwealth court. May it also

please, as well, Judge Panella's wife, Jeanne; daughter, Alison; sons, Rocco and Brian. As well as I understand Mrs. Panella and his sister here today. May it please all the members of the Panella clan as well as the members of the Bar of Pennsylvania here and all of the many friends, legions of friends present here today. And may it please, World Heavyweight Champion Larry Holmes. He's a fellow you want to please at all times.

We assemble this afternoon for the Ceremony of the Oath of Judge Jack A. Panella. The occasion is, of course, much more than a ceremony since his pronouncement of the Oath of Judge of the Superior Court is, in a very real sense, a moment of passage which marks a consecration of his career to the cause of appellate jurisprudence and enables celebration by all of us, the citizenry of Pennsylvania, will continue to be the beneficiary of his very special gifts.

Whether we describe the occasion as a consecration, or a celebration, or a ceremonial, a glance over the room makes it clear and certain that the rich, warm, happy glow, which each and all sense and feel, and reveal and reflect, can be described in a single phrase, absolute joy. While I am present here today as a friend of Judge Panella and his new colleague upon the Superior Court, I address this august assembly on behalf of the Pennsylvania Court of Judicial Discipline, President Judge Sal Cognetti and the other members of the Court to whom you were just introduced by President Judge Del Sole. That is a

Court upon which Jack and I both served as President Judge, thereby enabling me to bear clarion witness to his sterling performance as a architect of the jurisprudence of judicial conduct review in Pennsylvania.

In 1993 the citizens of Pennsylvania, by firm ballot and ringing pronouncement, changed the Constitution of Pennsylvania and directed that the system of judicial conduct review by conducted by two separate and autonomous agencies: A twelve member Judicial Conduct Board to consider complaints relating to judicial behavior, and an eight Judge Court of Judicial Discipline to conduct trials in those cases where the Judicial Conduct Board concluded there was prima facie cause for that complaint. It is a system which our illustrious President Judge Del Sole is so well familiar, since he was elected by the 12 members of the Board to be the very first Chairman of that Board. Now surely it is instantly clear that the court of Judicial Discipline performs a unique and critical role in our government, since it must achieve a precious balance between a duty to inspire in the citizenry, including the legislature and the executive branches, a confidence in the integrity and competence of all judiciary as well as that duty to inspire the confidence in the citizenry.

It has a responsibility to inspire a confidence in the 450 Common Pleas Court Judges and 500 District Justices throughout the State that the Court of Judicial Discipline is a fair tribunal and not a pawn of either politician or publisher.

I can tell you that the judges of the court of Judicial Discipline, quickly upon the arrival of Judge Panella to that Court, realized that he is an individual who blends superbly, an intellect which transcends cleverness, with a spirit of dedication and commitment. And I can assure you that the guidance and counsel of Judge Panella during his four year term as judge and as President Judge of that Court enabled the Court of Judicial Discipline to attain those goals by molding for decades to come the jurisprudence of Judicial Conduct Review.

Now, a few weeks ago before this past election, a revered and deeply admired observer of the political scene, having watched the judicial candidates during the preceding year, characterized Judge Panella as a Hollywood Collage, because Judge Panella revealed the soft, shy side of Jimmy Stewart, the grit and determination of Clint Eastwood, and the glint of eye and sparkle of smile of Paul Newman. Thus it would seem that destiny played a part in his election to the Superior Court since he will then join a Court already renowned for Judges who are strikingly attractive and of star quality.

And so it is that I welcome my friend and colleague Jack Panella and thank him for the honor of participation in his Ceremony.

PRESIDENT JUDGE DEL SOLE: Thank you, Judge McEwen. I understand that Senator Lisa Boscola is here; Representative Richard Grucela; district Attorney John Morganelli. We also have

District Justice Nancy Matos-Gonzalez; District Justice Joan Marinkovitz; and District Justice Elizabeth Romig.

Now I assure you that concludes the lists that they gave me so I repeat, if anybody wants to be recognized by the Court at this time.

I call upon Attorney Leonard Zito.

MR. ZITO: Your Honor, may it please the Court, my attention was distracted just a few moments ago from the remarks because I never thought I would be involved in a ceremony where Judge Panella would be equated with Clint Eastwood, Dirty Harry?

Thank you, Judge, I appreciate that.

May it is please the Court, members of the Court and honored guests, on behalf of the Bar of Northampton County I introduce and move into the record that commission of the Honorable Edward Rendell, Governor of the Commonwealth of Pennsylvania certifying to the election of Judge Jack Panella to the Superior Court of Pennsylvania.

With the permission of the Courts, I now call Donald Cunningham, Jr., our Secretary of General Services for the Commonwealth of Pennsylvania, and I request that he read into this record the Commission of Governor Rendell.

Mr. Cunningham.

PRESIDENT JUDGE DEL SOLE: Permission granted.

MR. CUNNINGHAM: Before I read the Commission I just want to say that it is a tremendous honor and a privilege on two counts to have the great distinction of being able to read our Commission.

Judge Panella, first it is an honor to be here on behalf of Governor Rendell. I wanted you to know that he sends his regards, his congratulations.

And secondly, it is a great honor because the Panella and Cunningham families have become quite linked together over the last several years, with my father working for Judge Panella, spending a lot of time the last year with Judge Panella, and now working for Judge Panella in his new role on the Superior Court. So both from a family, and a personal level, and a professional level it is my great honor to read these commissions into the record.

> It appears by the certificates and returns made, according to law of the election held on the 4th day of November, 2003 that you, Jack Panella, have been duly elected Judge of the Superior Court in the Commonwealth of Pennsylvania; therefore, know ye that in conformity to the provisions of the Constitution and laws of the said Commonwealth and such case made and provided, I do hereby present this Commission to you as Judge of the Superior Court of the Commonwealth of Pennsylvania, Third Priority of Commission. To have and to hold the said office together

with all the rights, powers and emoluments thereunto belonging or by law in anywise appertaining – I didn't write this – for the term of 10 years, to be computed from the first Monday of January, 2004, if you shall so long behave yourself well. Given under the hands and great seal of the State of Pennsylvania, the City of Harrisburg, on the 2nd day of January, the year of our Lord, 2004, Edward G. Rendell, Governor.

PRESIDENT JUDGE DEL SOLE: Thank you, Mr. Secretary.

MR. ZITO: Thank you, Mr. Cunningham.

Your Honor, nearly 10 years ago to this date our late colleague, Renald Barrata, moved the Northampton County Court to administer the oath of Judicial Office to Jack Panella as a member of the Northampton County Court. In his memory and under the authority of the Commission of the Governor, I now similarly and respectfully move this Court to administrator the judicial oath of Judge Panella entitling him to enter into the duties as a judge of the Superior Court of Pennsylvania.

PRESIDENT JUDGE DEL SOLE: Motion is granted.

MR. ZITO: Thank you, Your Honor.

PRESIDENT JUDGE DEL SOLE: Jack, it was a long time coming.

JUDGE PANELLA: I know.

PRESIDENT JUDGE DEL SOLE: Ladies and gentlemen, I introduce the Honorable Russell M. Nigro, Justice of the Supreme Court of Pennsylvania.

JUSTICE NIGRO: Thank you, President Judge Del Sole.

I want to apologize for my voice. I want you all to understand that I'm not attempting to audition for Godfather 4; unfortunately, my family doctor, who happens to be a personal friend of mine, started calling me about 3 or 4 weeks ago suggesting and imploring me to get a flu shot, which I have never gotten, never before. And he called me 2 to 3 times and told me he was running out of flu shots vaccine and that I better get down to his office to have this flu shot. Well, against my better judgment thinking he was the doctor and knew more than I did, I went down and got my flu shot and I have sounded like this ever since. So I know we have a lot of lawyers in the audience, if you all want to leave your business card.

Let me say that this is a great day for the Panella family, and it should be. It is my privilege and honor to not only be here and come back and visit this Courthouse, as I did many times in my two campaigns in '93 and '95, and got an opportunity to see a lot of you again and it brings back a lot of wonderful memories. The memories weren't quite as good in 1993 but they were great in 1995. And history has a way of just remembering the good things, I guess. But I had the opportunity at that time in 1993

to meet Jack. He's a wonderful human being. He's a hard working guy. When he called me up about a year ago and said, can I come down and speak with you? Because I'm thinking about doing something important in my life and, you know, I'd like to have your opinion. So he came down to speak with me and had indicated that he was thinking about running for the Superior Court and the advice that I gave him, which I felt was more important than anything else, was that he should be honest with himself and honest with everybody he came in contact with. And that he should work very, very hard because it is a very, very tough task to place yourself out there to the people across the entire state. I said, you don't want to wake up the day after the election, look in the mirror and say to yourself, I lost a very close election and I should have done this and I should have done that.

Well, I can tell you the man exceeded the expectations of what was necessary to be successful. His hard work and dedication, his focus was very, very critical and allowed him to be successful. Now the problem is, Jack, is that you now have to accept the responsibility of winning this 10 year term to the Superior Court and you have an obligation to the people of this state to do your very best day in and day out to decide the cases fairly, to decide the cases competently and to not get caught up in the trappings of being on the Appellate Bench. I have confidence that you will do exactly those things during the next 10 years. And everybody here in this room will be happy 10 years from now, as they are today, that you

did exactly what they asked you to do, your job in the right way. So I congratulate you and I congratulate your family. And again, as I said, it is a pleasure to be back here in Northampton County.

With that will everybody please rise. I need a little help from the audience. I need Master Brian Panella to come up because you need to help out your dad here. You have got to hold that Bible while I administer the oath of office.

Judge, please repeat after me: I Jack Panella.

JUDGE PANELLA: I, Jack Panella.

JUSTICE NIGRO: Do solemnly swear.

JUDGE PANELLA: Do solemnly swear.

JUSTICE NIGRO: That I will support, obey and defend;

JUDGE PANELLA: That I will support, obey and defend;

JUSTICE NIGRO: The Constitution of the United States;

JUDGE PANELLA: The Constitution of the United States;

JUSTICE NIGRO: And the Constitution of the Commonwealth of Pennsylvania;

JUDGE PANELLA: And the Constitution of the Commonwealth of Pennsylvania;

JUSTICE NIGRO: And that I will discharge;

JUDGE PANELLA: And that I will discharge;

JUSTICE NIGRO: The duties of my office;

JUDGE PANELLA: The duties of my office;

JUSTICE NIGRO: As a Judge on the Superior Court of Pennsylvania;

JUDGE PANELLA: As a Judge on the Superior Court of Pennsylvania;

JUSTICE NIGRO: To the best of my ability;

JUDGE PANELLA: To the best of my ability;

JUSTICE NIGRO: And with fidelity;

JUDGE PANELLA: And with fidelity;

JUSTICE NIGRO: So help me God.

JUDGE PANELLA: So help me God.

JUSTICE NIGRO: Congratulations to you.

(APPLAUSE)

PRESIDENT JUDGE DEL SOLE: Before we proceed to the next event on the program at this point one or two of our Judges may be leaving because they have flights to catch back home. So you understand that Jack, they are not leaving because you are coming on the Bench.

Now to robe our new Judge is John Morganelli, the District Attorney of Northampton County and Martin D. Cohen, Esquire. Will you come forward.

(Judge Panella was robed.)

PRESIDENT JUDGE DEL SOLE: Your Honor, do you have any response, or disclaimers or anything?

JUDGE PANELLA: Clint Eastwood, Paul Newman? Jeanne doesn't know how good she has had it over the years.

Thank you very much, Judge.

With all my heart I thank you, all of you.

Just a few quick things. In 1991 when I first took the Bench, if any of you know what my name means you know it is bread. I was granted a gift by Judge Hogan and I thought it only right to return the favor. So Judge Hogan, we have a loaf of Italian bread for you.

Many of you remember back in 1991, when I first took the Bench, there were a lot of bets being made that I could not sit long enough to be a Judge. As a matter of fact, Judge McFadden gave me this seat-belt.

We just finished the campaign. I was up all over the state, standing up, walking around the room.

Larry, my good friend, you made a comment once about me speaking and walking around. I have been sitting for this entire Ceremony.

Judge, may I have permission to approach the podium, please?

PRESIDENT JUDGE DEL SOLE: I think your colleagues want me to say no but please do.

JUDGE PANELLA: Thank you, Judge.

Excuse me one moment. That feels so much better.

You have to bear with me, a few people and a few organizations I must thank.

First, and I'm going to make you all work with me just a little bit, this is long overdue. In 1980 it was a privilege of mine to join the Northampton County Bar Association, a group of professionals dedicated to the practice of law, to representing the interests of individuals, protecting their Constitutional rights and also protecting our streets.

I would like very much if all of you would please stand with me in a salute to the greatest Bar Association in the world, the Northampton County Bar Association.

(APPLAUSE)

Thank you. Without them Judge Simpson and I would have been nowhere. They stood behind us coming from the Lehigh Valley.

You know, the campaign was rather grueling, from February till November I put forty thousand miles on my car and that doesn't include when Mike

Prestipino drove, also doesn't include the times I flew. And believe me, I have enough frequent flyer miles for all of us to go to Hawaii. The way I stayed focused, the way Jeanne and I tried to stay centered on the campaign, to remember the reasons we really decided to direct our lives towards public service for working for our fellow men and women, for doing things for the good of our community, what I did was I did my best to engage in daily prayer and to attend Mass as often as I could. You see in this room we're all of different religions but the one thing that all Americans share is that inner core of morality. It forms the basis of decency in our Country. And we have to remember why we're here and why we were put here. That is why it was such a joyous occasion for my family and me that Bishop Edward Cullen took time from his busy schedule to join us for today, the chosen leader of my faith in the Lehigh Valley. So please join me in thanking Bishop Cullen.

(APPLAUSE)

You know, they put a microphone in front of me on Election night and I didn't know what to say, so they said, would you like to thank anybody? Of course I'd first like to thank God, I'd like to thank my family and I'd like to thank the Sons of Italy. I had to, during the course of the campaign, join every Italian American organization in the State. In Pittsburgh, I think it was a Calabrese organization, in Pittsburgh they fed me some kind of meat pie. It is still right there. Wherever I would go they would say, sit down,

eat something. I would say, but I have to give a speech. It is okay you have time, sit down and eat.

If there is one example that I have to make, if this is anything like 1991, when I was sworn in, there are many Italian Americans out there, it would have to be the support I received. Many of them are members of the Sons of Italy. I wanted to say something in Italian to all of you but having been born in Brooklyn it is difficult enough for me to speak English so that you can understand me so I asked my good friend, Judge Ralph Sposato to join me for a moment to say something in Italian. Judge Sposato.

JUDGE SPOSATO: I am extremely honored that I could express sentiments on behalf of my dear friend, Jack, in Italian, the language of our ancestors.

(Judge Sposato spoke in Italian.)

Thank you very much.

JUDGE PANELLA: Lori, did you get all that down?

Regrettably there are a few important friends that are not here with us today, although they should be, and they are in our hearts. Attorney Joseph Leeson taught me first how to be an attorney. Gene Hartzell will always be in my memory; he appointed me County Solicitor and gave me guidance in the early portions of my career. Judge Alfred T. Williams, when I first joined the Bench, when I was an attorney, I don't know what life would have been like without him.

When I'm asked to name the finest individuals I have come across in my life, I always name Governor Robert Casey as one of them. I treasure his book, which he gave to me, Fighting for Life. It has served as an inspiration to me. And again, I can't be grateful enough that a representative of his family, Bob Casey, Jr. is here with us.

The last one is a very appropriate one to talk about today because he represents many of the groups that we just spoke about. After my clerkship, I didn't want to practice law with anyone other than Renald Baratta. Renald Baratta was an excellent attorney in a courtroom. No one matched him. He was the type of person to lead, give guidance to young attorneys. I asked him, "Renald, may I practice with you?" He right away opened up his office, gave me a desk. Believe it or not Jeanne was my secretary back then and he gave us the opportunity to form a life for ourselves here in Northampton County. I remember once his secretary came up after I just shortly started practice, Renald says on a Friday afternoon, have a good weekend and here is two hundred dollars, go buy some groceries. That is the kind of heart he had. On behalf of all of the members of the Bar Association I want to acknowledge Renald as an example of this Bar Association. And Pat Baratta, where are you? Pat, I thought you responded. Give me a moment. Sometimes we don't get the opportunity to say good-bye to our friends. Sometimes we don't get the chance to tell them how important they are to us, or to give them the proper recognition they deserved. In

Renald's honor today, I would like to make a presentation to Pat Baratta. Pat.

I have been working in this Courthouse since 1980, the finest group of individuals you could ever think of working with, Prothonotary's Office, Criminal Division, all of you out there. We tried to reserve seats for you, too, so you could be up front. The Probation Department, Juvenile and Adult, Mark Mazziotta, so many times I have attorneys in chambers and the phone would ring. I'd pick it up and I'd say excuse me, it is the Chief Adult Probation Officer, I have to speak to him. I go silent. Yes, yes, Mark, I love you, too. Tell me what you need me to talk to me about. The greatest group of individuals that a person could ever think of working with are located right here in Easton, in our Courthouse. The Courtroom 5 staff, wonderful people. My former secretaries are here. My current secretary, Val, Alicia. Most of my former law clerks are present in here. All of you, the greatest in the world, really. A Judge doesn't do this job alone. It is the people doing the backup work that get you there and have you prepared in Court, have those cases move along.

There is not too much I can say about Spaz that you don't already know. It has been wonderful, Spaz. Charles Spaziani really taught me – a true story. When Spaz and I were interviewing a perspective client, he came in and just as we were walking out he turned to me and he said, well, I need this zoning variance who do I bribe? So I went to Spaz's office and I said, Spaz, that is what he said to me should I show

him the law? And Spaz said, no, you show him the door. Spaz, again from the bottom of our heart it is wonderful being with you.

There are two special people I have to talk about right now. One of them is not really part of this but he should be because he's not really sitting in the close well of the Court. And I'm going to follow a little lead by Justice Baer right now, for all of the years of guidance, friendship, just about anything you could think of, I would like Gino Giunta, I would like you to take my seat next to Spaz at counsel table now that I'm not sitting there, please.

Bernice Lavella, where are you? She has been with me almost my entire career in Judge Franciosa's office, in private practice, then again back into my judicial office, gave me great advice during the campaign, worked with me. Was there stuffing envelops, doing everything like that. Life would have been nothing for us without you, Bernice. And you have to bear with me one moment again. And again, it is the people behind the scenes that never get the recognition. For everything a judge does, there is a judicial secretary behind the scenes. When a lawyer is in Court it is typically that legal secretary that has prepared everything. Well, this is the fine example of a person who makes people like me look good. Bernice Lavella.

It is not without a great deal of regret that I part company, for now, with a dear friend, Judge William Moran. We have worked together in a professional

capacity for longer than I care to mention. He trained me well in the County Solicitor's Office, and then it was a unique experience when I again joined him, this time on the Northampton County Bench. His friendship and his advice have guided my career – I look forward to the day we work together again.

As I said, there are too many people to thank from the campaign. I must make specific mention though of Attorney Steven Goudsouzian, who sacrificed many long hours. Without the guidance and support of people like District Attorney John Morganelli, Martin Cohen, my good buddies, Phil Hof and Steve Molder, Joe Long, and John Werkheiser, and there are so many others – I apologize if I missed you – from the bottom of my heart an endless thank you.

Now I have family over here. What can I say about my wife? She has backed me all the way, all these crazy decisions, career moves we decided to make to try to serve the public. She has stuck with me through thick and thin, agreed with me when I wanted to leave private practice and go full time into public service. And there is not much more I can give to you, Jeanne. There is one thing I know that you don't have. Just one moment. If anybody deserves a trophy it is Jeanne Panella.

Now, I have given flowers to Bernice, to Pat. My mom and sister are here. Do you think I'm crazy? I got them flowers, also.

JUSTICE NIGRO: I wish I had the florist concession.

JUDGE PANELLA: You know inspiration comes from many different parts of our life. For me one of the strongest areas is among the people of Pennsylvania, people of Northampton County. I had the privilege of accompanying my good friend Phil Noto to Bosnia to visit the Pennsylvania National Guard. Young men and women who are stationed in Bosnia to protect us and they are in foreign and dangerous soil but they are there to protect us. They are sacrificing for us.

Here in Northampton County I know my friends, the sacrifices they have made over the terms of their lives, working hard in steel mills and horrible furnace rooms, working in the coal mines. As I would travel around the state I would meet some fellow Pennsylvanians who want nothing more than to have a job and support their families. They want medical coverage. They want some type of plan there to make sure that the members of their families are protected in the event of an emergency or in the event that medical treatment is necessary. It is the great people of Pennsylvania. You know we rebuilt Germany and Japan after World War II and we're now going to undoubtedly send billions of dollars to rebuild Iraq. My thoughts are for our Americans right here in Pennsylvania at times, people who want to have dignity, want to support their families and raise their children, and see their children educated. Well, that's where my inspiration comes from and that is why

Jeanne and I decided many, many years ago to direct our lives full time into public service. And look at the people I've become associated with, all with the same values. And I have been involved with politics for too many years to know there are many out there that are not sincere. That is why I wanted my sons' classes to be here, students from the high school and from grammar school. I want all of you to know that never let the concept of downsizing or the concept of one hundredths of a percent more of a profit margin to interfere with your responsibility to your fellow men and women. There are people out there that need you. That is why Jeanne and I made this decision and that's why, believe me, I have no hesitation in closing when I say to you God bless the people of Northampton County. God bless Pennsylvania. And God bless America.

Thank you.

PRESIDENT JUDGE DEL SOLE: Please be seated everyone.

Jeanne, your husband has asked me to enter an order prohibiting you from giving that trophy back to him to put in his chambers but I won't do that. If you want to send it to him you can have it out there.

JEANNE PANELLA: Thank you.

PRESIDENT JUDGE DEL SOLE: Judge Panella has asked that I advise everyone that there is a reception beginning at 3 o'clock at the Candlelight. I assume everyone here knows where that is.

At this time I would call upon Monsignor Sami Hayek of our Lady of Lebanon Church for the Benediction.

Monsignor.

MONSIGNOR HAYEK: Heavenly Father, we stand before Your divine majesty now for Your servant and son, Judge Jack Panella, his family and friends, the spirit of joy, gratitude, after celebration for all his accomplishments and all Your blessings upon him and his family. We implore You to continue to look upon him as he assumes further responsibility now in his noble profession, confirm him in his commitment to work for the truth, social justice, peace and harmony among people. And that his decisions in the future may always be as they have been in the past, for the benefit of others, and serve the needs of society.

Heavenly Father, all power, glory, praise and worship belong to You now and forever until all eternity. Amen.

PRESIDENT JUDGE DEL SOLE: Now I would ask that Matthew James Allshouse come up again for a rendition of God Bless America.

(Matthew Allshouse sang God Bless America)

PRESIDENT JUDGE DEL SOLE: You may be seated. Friends and colleagues, we thank you, everyone here in Northampton County, for the courtesy that they have extended to us on this gorgeous day,

wonderful day in the life of the Panella family and a great day in the Superior Court.

Anything further?

MR. MORRISSEY: No, Your Honor.

PRESIDENT JUDGE DEL SOLE: Would you please adjourn.

MR. MORRISSEY: This very special session of the Superior Court of Pennsylvania is now adjourned.

(COURT ADJOURNED)